APPENDIX B

Civil Minutes - General

Case No. CV 92-6998-HLH

Date: January 11, 1993

Title: Janelle Susan Spain, et al. v. Aetna Life Ins. Co.

Present: Hon. Harry L. Hupp, Judge
Millie Borgarding, Deputy Clerk

Attorneys Present for Plaintiffs: Sharon Arkin

Attorneys Present for Defendants: Bless Stritar Young, Perry Cameron

Dismiss

ORDER:

The motion to dismiss is granted.

The First Amended Complaint (FAC) alleges claims which are preempted by ERISA. (Pilot Life '87 481 US 95, 95 LEd2d 39; Settles 10 Cir'91 927 F2d 505; Corcoran 5Cir'92 965 F2d 1321; Holmes CDCal'89 706 F.Supp. 733.) While there are areas of litigation against ERISA plans which are outside of ERISA preemption (e.g. Mackey '88 486 US 825, 100 LEd2d 836), a case which deals directly with the construction or administration of an ERISA plan is so much related to the plan that it must be considered preempted.

Here, the main thrust of the lawsuit is that a denial in authorizing

a continuation of medical treatment in progress negligently caused the death of an ERISA beneficiary. This has to do directly with the administration of an ERISA plan, and is therefore "related" to the plan within the meaning of Pilot Life preemption.

Plaintiff gives the example of a case where there would not be preemption--the plan's automobile negligently runs over the beneficiary and kills him. The difference is that the hypothetical case does not involve the granting or withholding of benefits.

There are cases (this court has had a few) which are on the borderline and hard to call, but this is not one of them.

Governing fact is whether administration of plans is involved. If

so, there is preemption. Warren Hosp (5th Cir) where line is drawn

Motion to dismiss granted. Plaintiff acknowledges she cannot improve pleadings to circumvent preemption.

Dismissal is w/o leave to amend.

Dismissal by separate order signed and filed today 1-11-93.